IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5419 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UMESHKUMAR GANGAPRASAD GAUD

Versus

STATE OF GUJARAT

Appearance:

MRs. S.G. Patel or Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/01/2000

ORAL JUDGEMENT

Heard learned Advocate Mrs.S.G.Patel for the petitioner and learned A.G.P. Mr. A.J. Desai on behalf of the respondents nos.1, 2 and 3.

1 The detention order dated 18-5-1999 passed by the Commissioner of Police, Surat City (respondent no.2)

against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the detenu under Section 9(1) of "PASA", copy of which is produced at Annexure "C", inter alia indicate that vide CR no.45/99 registered at Umra Police Station a criminal case has been registered against the petitioner for the offences made punishable under Secs.393, 397, 307, IPC and Section 25(1) of Arms Act. The offence was registered on 13-1-1999 and the petitioner was arrested on that day. However, on 29-1-1999, the petitioner was released on bail by the competent court. That the charge-sheet in the said matter has been filed and the matter is pending for trial in Court.

2.1 The grounds of detention further indicate that two witnesses on assurance of anonymity have given statements dated 29-3-1999 against the petitioner-detenu with regard to antisocial activities of the petitioner-detenu and have narrated the incidents alleged to have occurred on 20-2-1999 and 28-2-1999 respectively.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that criminal case against the petitioner has been registered on 13-1-1999. Thereafter, the petitioner was released on bail on 29-1-1999. That according to the detaining authority, the sponsoring authority had recorded statement of two witnesses on assurance of anonymity on 29-3-1999 wherein incidents alleged to have occurred on 22-2-1999 and 28-2-1999 are referred to. That the verification of the said two statements appears to have been made by the detaining authority on 17-5-1999 and thereafter on 18-5-1999, the impugned order is passed. Thus, there is no nexus between the alleged antisocial activity of the petitioner and the impugned action taken by passing the detention order, and as such, the subjective satisfaction having

been vitiated, the order is bad in law.

5. In the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656), the Supreme Court has held that unexplained delay of five months and six days in passing the detention order from the date of registered offence which is the base for passing the order, the order is rendered invalid on account of the live link between the alleged activity and the impugned action taken having been snapped.

5.1 That this Court in the case of ELESH PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381, after having considered the various authorities of the Supreme Court has also expressed the aforesaid view that where the live link between the alleged antisocial activity of the petitioner and the date on which the impugned action is taken is snapped, the detention order passed on the basis of registered case is invalid.

6. In the instant case, scrutiny of the grounds of detention and the compilation of papers suggest that grounds of detention does not contain any explanation as to alleged criminal activity which has come to the knowledge of the sponsoring authority on 29-3-1999. Therefore the statement of anonymous witnesses with regard to antisocial activity has been treated as a dangerous activity of the petitioner and after verification of the said statement on 17-5-1999, the impugned order came to be passed on 18-5-1999. That none of the respondents have filed any affidavit despite due service and as such, the inordinate delay in taking action against the petitioner has remained unexplained which shows non application of mind of the detaining authority and has rendered the impugned order invalid.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 18-5-1999 passed by the Police Commissioner, Surat City (respondent no.2) is hereby quashed and set aside. The petitioner-detenu-Umesh Kumar Gangaprasad Gaud is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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